

FCC MAIL SECTION
Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554
DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Gulf Hammock, Florida)

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)
)
) MM Docket No. 99-73
) RM-9348
)
)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 24, 1999

Released: March 5, 1999

Comment Date: April 26, 1999

Reply Date: May 11, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Levy County Broadcasting ("Levy"), proposing the allotment of Channel 257A at Gulf Hammock, Florida, as that community's first local broadcast service.¹ Levy indicated that he would file an application to operate a station at Gulf Hammock if a channel is allotted to the community.

2. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See e.g., Oak Grove, FL, 5 FCC Rcd 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685 (1990). Here, Gulf Hammock is an unincorporated community in Levy County. We find that the Gulf Hammock can be located on a map, has a post office and zip code (32639) and has a population of 250 people according to the 1998 *Rand McNally Commercial Atlas*. In support of its proposal, Levy has stated that Gulf Hammock has a volunteer fire department, a land

¹ In his petition, Levy requested the allotment of Channel 244A at Gulf Hammock. Channel 244A at Gulf Hammock is short spaced to a proposal to allot Channel 244A at Cedar Key, Florida. In an attempt to accommodate both proposals, we have substituted Channel 257A for Channel 244A at Gulf Hammock.

management business called the Gulf Hammock Land Management Department and the Gulf Hammock Quarry as well as a Circle K convenience store and a local church. Levy submits that Gulf Hammock does qualify as a community for allotment purposes because it has its own zip code and a geographically identifiable population grouping along with the use of the Gulf Hammock name in several businesses and a fire department. Levy points out that the local citizenry, through Levy County Broadcasting, support the allotment of an FM channel at Gulf Hammock. Although the above information favors Gulf Hammock's status as a community, we may find that the above information does not constitute a community for allotment purposes with respect to Gulf Hammock, where the community may be devoid of the customary factors associated with determining community status, such as a public library, shopping centers, community churches, a newspaper and social or civic organizations. See e.g., Searles Valley, CA, 3 FCC Rcd 5221 (1900); see also Naples, FL, 41 RR ed 1549 (1977). In past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. Therefore, Levy is requested to present the Commission with specific information to demonstrate that the community of Gulf Hammock has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, FL, 6 FCC Rcd 633 (1991) and cases cited therein. We recognize that Levy has indicated there are some businesses in Gulf Hammock, but it has not identified those entities with addresses or shown that they are intended to serve residents of Gulf Hammock as opposed to the Levy County. Levy is requested to provide information showing that the organizations, civic groups, churches, schools, police, etc., have a nexus with Gulf Hammock.

3. A staff engineering analysis indicates that Channel 257A can be allotted to Gulf Hammock consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 13.8 kilometers (8.6 miles) southwest of the community.² The site restriction will eliminate short spacings to Channel 256C, Station WQIK, Jacksonville, Florida, and a construction permit for Channel 258A, Station WBEQ, La Crosse, Florida.

4. In view of the fact that the proposed allotment would provide a first local service to Gulf Hammock, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 257A to Gulf Hammock, in the event it is ultimately found to qualify as a community for allotment purposes. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Gulf Hammock, as follows:

| Community | Channel No. | |
|-----------|-------------|----------|
| | Present | Proposed |

² The coordinates for Channel 257A at Gulf Hammock are 29-09-37 NL and 82-49-15 WL.

Gulf Hammock, Florida

257A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 26, 1999**, and reply comments on or before **May 11, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Cary S. Tepper
Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Avenue, N.W., Suite 307
Washington, D. C. 20016-4120

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission,

Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.